

Worker Share Agreement Guide and Models

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Disclaimer

The laws addressed by these agreements are highly state specific. We have written model agreements that attempt to incorporate specifics from many state laws. We cannot guarantee that these agreements satisfies your state's particular requirements or addresses your specific worker share program. It is important to consult an attorney licensed in your state for further assistance in implementing these models. This publication does not provide legal advice or establish an attorney client relationship between the reader and any author.

For questions or feedback on these model worker share agreements, please contact Rachel Armstrong, Executive Director of Farm Commons, at rachel@farmcommons.org or 608 616 5319 or A. Bryan Endres at bendres@illinois.edu.

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Introduction

Why we wrote this guide

This document presents model agreements for farms that host worker shares. “Worker shares” are volunteers that serve the farm in exchange for food. For example, many Community Supported Agriculture (“CSA”) farms have a worker share program to reward committed, weekly volunteers with a free share in the CSA.

Bringing people out to the farm is an important mission for many CSA farms. A worker share program allows community members to experience a farm firsthand over the course of an entire season while helping to produce their own food. We value that relationship, and we value the role of worker share programs in building the community that is so integral to CSA. Because of the significant risk of injury on any working farm and the risk of creating a legal employment situation however, a worker share program is more secure when farmers make critical decisions about how to handle a worker share program. Our intent in writing this guide is to protect both farmers and worker shares, while achieving their shared goals.

Which Agreement To Use: Volunteers or Employees?

An important and difficult distinction

Worker shares generally do not receive cash, but that doesn’t mean they are not employees for the purposes of the law. Minimum wage law and workers compensation law may apply to worker shares. Whether working with a for-profit business or a nonprofit commercial enterprise, helpers are not necessarily outside employment laws just because they are paid in vegetables. In some cases, worker shares who do not receive any compensation at all may still be employees under the laws of that particular state.

Anticipating whether worker shares are employees or volunteers is not a simple task. Federal and state minimum wage laws may have different definitions and the law is very unclear regarding situations as unique as worker shares. Additionally, state workers compensation laws may also define employees under workers compensation differently than as defined under minimum wage rules. Generalizations are hazardous because only the laws in a specific jurisdiction will matter to cases brought there. That being said, we offer some guidelines for determining whether a worker is an employee or a volunteer under federal minimum wage law. If a farm uses worker shares instead of employees, the worker shares may be considered employees. If the farm gains a competitive advantage from using worker shares, then worker shares may be employees. If worker shares are working for the purpose of receiving compensation, they may be employees. We realize these standards are vague and highly fact specific. Moreover, court decisions on this issue are complex and divergent on this area of law. This is why it is important to contact an attorney to help you with determining the employment status of your worker shares.

Play it safe

The best advice we can provide at this point is to treat worker shares as employees. Determine if minimum wage laws apply and, if they do, make sure you are meeting them. If the court finds that your worker shares were employees, you may owe back wages and back taxes for all time worked. If workers compensation laws apply, buy coverage. In some states, not carrying workers compensation when required is a criminal or felony offense. In other states, violating workers compensation laws can leave you liable for triple damages. Finally, if you treat worker shares as employees, make sure you determine if payroll taxes apply or if your farm qualifies for an exception.

We must reiterate this point:

The safest choice a farm with worker shares can make is to treat worker shares as an employee. We have drafted two model worker share agreements; the first treats worker shares as employees and the second as volunteers. ***We recommend using the volunteer agreement only if you have come to an informed decision that your worker shares are volunteers, preferably after seeking the advice of an attorney licensed to practice in your state.***

Using the Worker Share Agreements

Why have a formal agreement with your workers shares?

Because it can help the worker share and the farmer have a positive experience:

A written agreement creates space for both the worker share and the farmer to reflect on the relationship they are about to enter into. A written agreement lays matters out clearly and permanently, so both parties understand their obligations. Achieving clarity at the beginning of the season can go a long way towards preventing future problems.

The agreement is also an important opportunity to communicate with worker shares about the realities and responsibilities of their task. Those of us familiar with farm life have absorbed many lessons about farm safety without thinking about them. Those who haven't spent much time on a farm may not have what farmers think is common sense. Your worker shares are about to be exposed to unfamiliar situations. If they enter your farm knowing the risks, they may listen closer to your instructions. Further, your worker shares may be honestly mistaken in believing you have insurance for their injuries, which you may not. By being upfront about the realities of a working farm, your worker shares may have a safer and more productive experience.

You might worry that asking worker shares to sign a formal agreement will appear litigious and unwelcoming. We understand that concern, but we also see opportunity in a formal agreement. You are developing an important relationship with your worker shares. They can be a valuable source of labor and terrific ambassadors to your community. A formal agreement can create a

professional atmosphere that increases your worker shares' sense of responsibility and commitment to your farm.

Because your farm is at risk:

Perhaps more importantly, a farm that does not use a worker share agreement is taking a big risk. A worker share program looks like a simple exchange of volunteer labor for food. But from a legal perspective, this relationship is not simple at all. Worker shares walk a fine line between employees and volunteers. If you haven't carefully considered on which side your program falls, you may be exposed to a lawsuit for back wages or workers' compensation benefits. Further, if a worker share is injured on your farm, your farm may be responsible for medical bills or compensation to the family. Depending on how you've structured your business, you may lose your farm's assets and even all of your personal assets to pay off those bills.

Because a lawsuit may not be your worker shares' decision:

Many farmers do not ask for signed agreements because they only work with individuals whom they trust not to bring a lawsuit. Unfortunately, when it comes to injuries, the worker share is probably not the person to decide whether a lawsuit is filed. If an injured worker share uses their own health insurance for an injury they suffered on your farm, their health insurance company will make the decision about whether to sue your farm for compensation. Generally, we grant the insurance company the right to file lawsuits as they see fit when we sign up for coverage. The insurance company will decide if your farm is sued, and they also have the right to demand cooperation from your worker share as the lawsuit proceeds. Regarding employment laws, state or federal departments of labor can choose to conduct an investigation even if none of your worker shares have ever filed a complaint.

Farmers should discuss with a lawyer whether they are creating an employment relationship or a volunteer relationship with their worker shares and use a worker share agreement that reflects the reality of the program.

A note about insurance

If your worker shares are volunteers, you might think a commercial general liability policy or farm insurance will cover their injuries. However, if the worker share was injured because another employee was negligent, your policy may specifically exclude coverage for negligence. Unless you have discussed your worker share program with your insurance agent in detail, you may not have the coverage you need. It is also possible your insurer will reduce your premium if you use a liability waiver. Finally, your insurance company may disagree with you about whether your worker shares are properly classified as volunteers and may refuse to extend coverage if they feel workers' compensation is required.

Some states require workers compensation for volunteers and agricultural employees. However, a farmer may choose to carry workers' compensation insurance regardless of whether it is required. Workers' compensation insurance protects the farmer because if it is available to an injured worker, that worker cannot sue the farm for liability. The farm avoids court costs, an

uncertain outcome, and the headache of a lawsuit entirely simply by carrying workers' compensation. Even if a farmer is reasonably sure she doesn't need workers' compensation on worker shares, the farmer's liability insurance company may disagree. The insurance company can sue the farmer to recover costs if they believe your worker shares are employees that should have been covered under workers' compensation. Providing workers' compensation insurance, whether it is required or not, prevents these potential problems. ***All farms should strongly consider carrying workers compensation for volunteers, worker shares, and employees for their own benefit, regardless of the law's requirements.***

What will happen if my farm does not use a worker share agreement?

The legal implications of a worker share program are uncertain. If a disgruntled worker share brings a minimum wage claim or a worker share is injured, we can't predict the consequences. This is partly because the law is unclear and partly because the court will look closely at the specific facts at the time to decide whether minimum wage, workers' compensation, or other compensation for injuries is due. What we do know is that an agreement gives you some control over the situation. With it, you have an agreed set of responsibilities between you and your worker shares. The court will consider that agreement in the event of a lawsuit.

When to use these agreements

Use these agreements for all compensated helpers or workers.

These agreements are for farm helpers who are reimbursed for their efforts in some way. Frequently, a farm will reimburse worker shares with a CSA share, but there are variations. For example, if you have a helper at your market stand who receives reimbursement for her mileage or unsold product at the end of the market, these agreements could be modified to apply in that situation. For those that do not receive anything of value in return for their service, our "Model Farm Volunteer Waiver and Guide" is suitable. If you host interns or apprentices (employees that are paid less than minimum wage but work full time or close to full time) these model agreements may not address those unique employment law concerns.

Ask for a signed agreement after you have selected your worker shares but before they begin work.

Many farmers take applications for their worker share program or use another process for screening potential worker shares. For example, many farms first talk with potential worker shares over the phone to assess suitability in terms of scheduling, physical ability, and interest in farm work. Then, many farmers will take a few weeks to review applicants before selecting the season's worker shares. We highly recommend a screening process because it makes the procedure more efficient. However, these agreements are not designed to screen potential participants. Instead, an agreement should be introduced when you let worker shares know that they have been selected.

It is easy to forget about the agreement after your worker shares arrive for their first shift. To avoid that, you should send out the agreement beforehand and request a signed copy on the first day while having additional forms on hand for those who forget. Alternatively, you may include the text of the agreement in an email and ask each individual to respond with a sentence stating that they have read, understand, and agree to it with their full name typed below the statement. Although not recommended, it is even possible to read the agreement aloud and ask each person to tell you that they heard, understood, and agree to it. We do not recommend verbal confirmation because you have no written evidence that it ever happened. However, it is better than nothing.

Reading these agreements

- The text of the Model Worker Share Agreement is on the top of each section.
- The “Annotations” section below the Agreement language explains the text above, offers suggestions, and discusses different scenarios.
- The brackets indicate where the user should change the Agreement language to be specific to his or her farm.
 - For example, “Our worker share program runs for [number] weeks, from [month] to [month],” should become, “Our worker share program runs for 20 weeks, from June to October.”
- To avoid extensive reformatting, download the version without annotations before you adapt the agreement for your farm.

Model Volunteer Worker Share Agreement

We, _____[Farm Name] _____, (the “Farm”) have offered you participation in our worker share program, and you _____[Worker Share Name] _____, (the “Worker Share”) wish to participate in our worker share program for [Date to Date/Year/etc].

To ensure a safe, productive, and positive experience for everyone, the Farm and the Worker Share agree to the commitments outlined below.

Section 1: Worker Share’s Obligations

I, the Worker Share, agree to the following obligations:

- A. Schedule: I will volunteer at the Farm from [hour] to [hour] on [day of the week] for [number of weeks].
- B. Duties: I will perform any reasonable tasks as the farm may assign. I may be asked to perform duties including, but not be limited to, the following: [insert description].
- C. Responsibilities: I will perform my tasks in a professional, courteous manner, follow the supervision and direction of any employee or volunteer to whom I am assigned, and participate in all training required by the Farm.
- D. Arriving Late or Missing Shifts: I will notify the Farm in advance if I am unable to arrive for my shift at the scheduled time. I will make up any missed time on the days designated as make up days by the Farm.
- E. Substitutes: I will not send a substitute to work my shift without the Farm’s prior approval.

Section 2: The Farm’s Obligations

We, the Farm, agree to the following obligations:

- A. Opportunity: We will provide the Worker Share with the opportunity to experience the intrinsic benefits of and learn about farming, food production, and community supported agriculture.
- B. Reimbursement: We will reimburse the Worker Share for their volunteer service with one [full CSA share] for the [Year] season.
- C. Termination: We reserve the right to terminate this agreement at any time. If we choose to do so before the schedule stated in Section 1.A has been completed, we will provide the Worker Share with all reimbursement earned up to the date of termination.

Section 3: Nature of the Worker Share’s Service

I, the Worker Share, understand and agree that I am not an employee of the Farm and am not entitled to, nor do I expect, any compensation for my service including, but not limited to, minimum wage, overtime, unemployment insurance, workers’ compensation insurance, or any other benefits.

(Model Volunteer Worker Share Agreement continued on next page)

(Model Volunteer Worker Share Agreement, continued)

Section 4: Worker Share’s Assumption of Risk and Release of All Claims

A: Risks of Volunteering

I understand that the activities at the Farm involve serious risks. I may be exposed to, for example, but not limited to: insects; wildlife; farm animals; inclement weather; extreme temperatures; heavy machinery; tools; the actions and negligence of employees, volunteers, and other people present on the farm; and dangerous conditions on the land such as holes in the ground or barbed wire. I understand that these examples are not all-inclusive and there may be additional risks, all of which may involve serious personal injury, death, or damage to my property.

B: Release of Claims and Assumption of Risk

In exchange for the opportunity to volunteer on the Farm, I (and my family, heirs, and personal representatives) willingly and knowingly release the Farm and its officers, owners, employees and agents from any and all liability for any personal injury or damage to property relating to my participation. I (and my family, heirs, and personal representatives) agree to assume all of the risks and responsibilities of my participation. I understand that I am solely responsible for any hospital or other costs arising out of any personal injury or property damage relating to my participation on the Farm.

C: Medical Care Authorized

I am physically fit to participate in activities at the Farm. I understand that there are no medical services available on site or otherwise, and I give the Farm permission to authorize emergency medical treatment for me. I release the Farm and its officers, owners, employees and agents, from liability for any injury or damage that might extend from such emergency medical treatment.

I further agree that this waiver should be interpreted as broadly and inclusively as state law permits.

Section 5: Signature

Printed Name of Worker Share

Signature of Worker Share

Date

Model Employee Worker Share Agreement

We, _____[Farm Name] _____, (the “Farm”) have offered you participation in our worker share program, and you _____[Worker Share Name] _____, (the “Worker Share”) wish to participate in our worker share program for [Date to Date/Year/etc].

To ensure a safe, productive, and positive experience for everyone, the Farm and the Worker Share agree to the commitments outlined below.

Section 1: Worker Share’s Obligations

I, the Worker Share, agree to the following obligations:

- A. Schedule: I will work at the Farm from [hour] to [hour] on [day of the week] for [number of weeks].
- B. Duties: I will perform any reasonable tasks as the farm may assign. I may be asked to perform duties including, but not be limited to, the following: [insert description].
- C. Responsibilities: I will perform my tasks in a professional, courteous manner, follow the supervision and direction of any employee or volunteer to whom I am assigned, and participate in all training required by the Farm.
- D. Arriving Late or Missing Shifts: I will notify the Farm in advance if I am unable to arrive for my shift at the scheduled time. I will make up any missed time on the days designated as make up days by the Farm.
- E. Substitutes: I will not send a substitute to work my shift without the Farm’s prior approval.

Section 2: The Farm’s Obligations

We, the Farm, agree to the following obligations:

- A. Opportunity: We will provide the Worker Share with the opportunity to experience the intrinsic benefits of and learn about farming, food production, and community supported agriculture.
- B. Payment: We will provide the Worker Share one [full CSA share] for the [Year] season.
- C. Termination: We reserve the right to terminate this agreement at any time. If we choose to do so before the schedule stated in Section 1.A has been completed, we will provide the Worker Share with all payment earned up to the date of termination.

Section 3: Medical Care Authorized

I am physically fit to participate in activities at the Farm. I may be exposed to, for example, but not limited to: insects; wildlife; farm animals; inclement weather; extreme temperatures; heavy machinery and sharp tools. I understand that there are no medical services available on site or otherwise, and I give the Farm permission to authorize emergency medical treatment for me. I release the Farm and its officers, owners, employees and agents, from liability for any injury or damage that might extend from such emergency medical treatment.

Section 4: Signature

Printed Name of Worker Share

Signature of Worker Share

Date

Annotations to Model Agreements

Section 1: Worker Share's Obligations

By the time you bring up a formal agreement, you have probably already discussed your expectations or rules with your worker shares. Why repeat them here? There are a few reasons. People may forget and a paper record is a good reminder. It also reinforces the importance of the rules. Lastly, listing your rules in the agreement incorporates them legally. Of course, you would hardly sue your worker share if they do not notify you that they are running 15 minutes late. But that is not the point of making your rules binding. Rather, it is to make your worker share program as effective as possible. If you have a worker share that consistently shows up 15 minutes late and it is hurting your efficiency, you can use this agreement to gently remind them of how important their time is to your farm. Nobody wants to constantly remind a wayward worker share of their obligations. This agreement can take some of that pressure off.

How to adapt this section:

At the top, fill in your name and the worker share's name. Or, leave the worker share's space blank for each individual to fill in. Write in your program dates as well. In Section 1.A, write in the precise schedule for each worker share. If that is too much work, you can distribute one schedule for all worker shares as an attachment and refer to it in this section. For example, "I will volunteer at the farm for 22 weeks according to the attached Worker Share Schedule." This may be a good option if you anticipate changing your worker share's schedules throughout the season, as well. If you keep a Google calendar or other online resource, you can refer to the Web address and regularly update it with changes or make up days.

Section 1.C should be modified with a general explanation of the tasks you typically assign to worker shares. This section is important to make sure that your worker shares appreciate the nature of farm work. Edit Sections 1.D-E with your farm's specific procedures. If you have additional rules such as wearing protective gear or leaving pets at home, add them to the list. We specifically wrote the list of worker share obligations in the first person because it is immediately understandable to the reader. We recommend keeping that format.

Section 2: The Farm's Obligations

Section 2 outlines the farm's obligations to worker shares. Section 2.B gives your farm the liberty to terminate a worker share if the arrangement is not working out for your farm. Please note that worker shares are not specifically given the same liberty to terminate their service. Of course, if a worker share asks to leave the program you can certainly allow that at any time. However, this agreement does not explicitly grant that permission because if you depend on your worker shares and invest in training them, you probably do not want them to quit at any time.

VOLUNTEER MODEL ONLY Section 3: Nature of the Worker Share's Service

Section 3 is very important. A worker share is different than a normal volunteer. Normally, volunteers do not receive compensation for doing volunteer work although sometimes expenses or mileage may be reimbursed. Also, volunteers generally donate their time to non-profits or public agencies, rather than for-profit businesses. Employment laws, especially minimum wage and workers' compensation, are designed to prevent employers from simply reclassifying workers as volunteers to avoid paying wages. As a result, even individuals who are not official employees of a business may be owed minimum wage if they appear similar to employees of the business. This means it is possible for volunteers who participate in a worker share program to be deemed employees by the court.

We have drafted this model agreement to avoid the potential scenario where a worker share is reclassified as an employee. First, Section 3 clearly states that the worker share agrees that the position is not employment. Second, the agreement specifically states that the worker share does not expect compensation for their service, which is crucial to volunteer status. Third, we have made careful word choices in this agreement. Although it is true that worker shares generally receive a CSA share or other products in exchange for their service, this agreement describes the share as "reimbursement" rather than "compensation." We have carefully chosen to describe your worker shares as "volunteers" who provide "service" in other sections of the agreement as well. It is highly unlikely that you would ever need to defend your worker share program as a volunteer program in court. But if you did, this agreement would be valuable evidence that your worker shares are, in fact, volunteers.

Of course if you do carry workers' compensation insurance on your worker shares, this section should be modified. In that case, state that although workers compensation is provided, the worker share is not an employee for the purposes of minimum wage, unemployment insurance, or any other benefits.

Is Section 3 effective as a waiver of minimum wage or workers' compensation?

Eligible workers cannot waive their rights to minimum wage or to workers' compensation so section 3 is not a waiver. A court may look beyond this agreement in making a decision about whether you should have paid minimum wage or provided workers' compensation. But even in such a scenario, this section is important because it shows that the farmer and worker share agreed that the position was not employment when the work began. Section 3 is written for a judge as well as the farmer and volunteer. **This section is not a guarantee that you will not be liable for minimum wage or workers' compensation insurance.** However, it is more effective than no signed agreement at all.

How to adapt this Section:

Regarding Section 2.A, because much of the value of being a worker share is the work itself, you may wish to modify it with a unique characterization of your farm. In Section 2.B, modify the reimbursement as to your agreement with the worker share. We recommend being as specific as possible by including the item, quantity or volume, and time frame, as applicable.

Additional Suggestions

Regarding Section 2.C, if you are uncomfortable without a clear way for your worker shares to terminate their service, you may write in a provision such as, “Upon giving two weeks advance notice, the Worker Share may terminate his or her service. We will provide the Worker Share with all reimbursement earned up to the date of termination.”

Because there is potential for a worker share to be classified as an employee for the purposes of workers’ compensation or minimum wage, it is important to consult an attorney licensed in your state for further assistance in implementing this agreement. Also, although the subject is outside the scope of this guide, you may benefit from having workers’ compensation even if the law does not require it. For more information on how workers’ compensation can be valuable, go to www.farmcommons.org/employees

Section 4 is a waiver of liability for any injuries the worker share may experience while on your farm. When the final worker share agreement is created, this section should be in at least 10 point font and located prominently in your agreement and not as an appendix that can be separated from the rest of the agreement. There are several important elements to this waiver, and the annotations below handle each section individually

VOLUNTEER MODEL ONLY Section 4.A: Risks of Volunteering

This section must accomplish two goals. First, it must be specific and clear enough for the worker share to understand the risks. Second, it must be broad enough to include risks that are related but not individually listed as well. To achieve this, we include the phrases “for example, but not limited to,” and “not all-inclusive,” along with a lengthy, detailed list of the potential hazards of farm work. If instead, a farmer re-wrote this section to list only highly specific risks, such as: “Worker shares will weed and wash vegetables; this involves a risk of hand injuries or of slipping and falling in the packing shed,” and did not include the “for example, but not limited to,” then that farmer may be responsible for injuries that occur while doing other things such as feeding chickens or driving a vehicle.

Because of the need for the worker to understand the risk, some states will release a business owner from liability for injuries resulting in death, regardless of whether the specific cause is listed, as long as the person is made aware that the activity can result in death. For this reason, we recommend specifically mentioning the risk of death in the waiver text. However, some states take a more permissive approach and uphold a waiver as automatically applying to all risks inherent in the activity. In those states, the waiver only needs to specify additional risks that are not inherent.

In some states, if you want a waiver to be insulated from liability for the “negligence” (which is a legal term of art that defines a wrongful action that causes someone else harm) of yourself or your employees, you must specifically include the word in the list of risks. However, in one state, individuals cannot be relieved of liability for their own negligence through a waiver. In other states, businesses cannot be released from liability for their employees’ negligence. **This**

waiver may not be effective to protect against liability for negligence. Again, it is important to consult an attorney licensed in your state for more information.

VOLUNTEER MODEL ONLY Section 4.B: Release of Claims and Assumption of Risk

Where Section 4.A explains the risks, Section 4.B releases the farmer from liability for those risks. Although you may be tempted to delete the long-winded phrases, “and my family, heirs, and personal representatives,” or, “the Farm and its officers, owners, employees and agents,” they are important because they are precise. Unfortunately, the law does not always appreciate simplicity or brevity.

The phrase, “any and all risks” is also important. State courts vary in their interpretation of waiver clauses and may find that without a phrase indicating that the farm is not liable for, “any and all risks,” in this section, then the farm may be liable for risks that are not inherent to farm work.

VOLUNTEER MODEL ONLY Section 4.C: Medical Care Authorized

This section is important for two reasons. First, it releases the farmer from liability if anything goes wrong while he or she makes an effort to treat an injured worker share. Second, it reminds worker shares that things could go wrong and the farmer will have to make decisions about medical care. Hopefully, this section will encourage them to inform you of any medical conditions that could affect emergency medical treatment. With this waiver as written, you should not be liable if you could not meet those special conditions, however.

Additional Suggestions

If you do purchase workers’ compensation insurance for your worker shares, discuss Section 4 with your insurance agent. The availability of workers’ compensation insurance may automatically act as a release of the worker share’s injury claims against your farm. Your insurance agent may recommend specific language about the insurance coverage and a procedure for handling injuries.

Section 5 (Volunteer), Section 4 (Employee): Signature

As explained above, a written signature may not be absolutely necessary for this agreement to be effective. But it certainly is the gold standard for proving that the parties agreed. Wherever possible, get a written signature.